

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
THOMAS O. CALDWELL)	FOIA Control Nos. 2016-000568 and 2016-
)	000678
On Request for Inspection of Records)	
)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 2017**Released: February 1, 2017**

By the Commission:

I. INTRODUCTION

1. By this memorandum opinion and order, we deny two applications for review by Thomas O. Caldwell (Caldwell)¹ of decisions by the Enforcement Bureau (EB)² ruling on Caldwell's two related Freedom of Information Act Requests.³ We find no error in EB's decisions.

II. BACKGROUND

2. Caldwell's FOIA requests sought information concerning the termination of amateur radio license KG5IDD, issued to John D. Watkins III (Watkins). Commission records indicate that the license was terminated by the Wireless Telecommunications Bureau on June 29, 2015.⁴ WTB issued Watkins' license four days earlier, on June 24, 2015. It set aside the license grant at the request of EB for enforcement review.⁵ Under 47 C.F.R. § 1.113(a), Commission staff may, on its own motion, modify or set aside an action it has taken under delegated authority within 30 days. The time period for Watkins to seek reconsideration or review of this action has long passed.

3. **April 20 Request.** Caldwell's April 20 Request stated: "I am trying to find the reason that Laura Smith terminated John David Watkins[]" (kg5idd) license based on a complaint from bad

¹ Email from Thomas O. Caldwell to FOIA-Appeal@fcc.gov (May 25, 2016) (May 25 AFR); Email from Thomas O. Caldwell to FOIA-Appeal@fcc.gov (Aug. 2, 2016) (August 2 AFR). Caldwell also submitted an email on July 12, 2016 related to the May 25 AFR.

² Letter from David C. Dombrowski, Regional Director, Region 1, Enforcement Bureau to Mr. Thomas O. Caldwell (May 12, 2016) (May 12 Decision); Letter from Ronald Ramage, Regional Director, Region 2, Enforcement Bureau to Mr. Thomas O. Caldwell (Jul. 13, 2016) (July 13 Decision).

³ Submitted electronically April 20, 2016 (April 20 Request); submitted electronically June 10, 2016 (June 10 request).

⁴ <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=3713340>.

⁵ See Letter from Terry Fishel, Associate Chief, Mobility Division, Wireless Telecommunications Bureau to John D. Watkins III (Jul. 11, 2015).

information without contacting John Watkins.”⁶ The request went on to recite further circumstances regarding Watkins. Laura Smith (Smith), mentioned in the April 20 request, is an EB official who worked on matters concerning Watkins.

4. EB responded that it had produced 39 documents concerning the termination of Watkins’ license in response to two earlier FOIA requests by Caldwell. EB further indicated that “[i]n response to this request, we have searched Commission records and have not located any additional responsive information related to your request.”⁷

5. In his May 25 AFR of EB’s response to the April 20 Request, Caldwell set out a lengthy account of circumstances he apparently believes are relevant to the termination of Watkins’ license, including Smith’s alleged participation in the termination. He concludes “I am asking you to provide me with any information justifying Mrs. Smith[’]s action terminating Mr. Watkins[’] license.”⁸

6. **June 10 Request.** In a similar vein, Caldwell’s June 10 Request requested a copy of “any statute, rule, authorization or law that Laura Smith used to terminate John Watkins[’] (kg5idd) without notice or hearing.”⁹

7. EB responded by reciting that WTB had terminated the license pursuant to 47 C.F.R. § 1.113(a), as discussed above at Paragraph 2. EB noted that “[a] copy of the Commission’s rules can be found on-line at www.fcc.gov.”¹⁰

8. In his August 2 AFR of EB’s response to the June 10 Request, Caldwell again engages in a lengthy discussion of the circumstances surrounding the termination of Watkins’ license. He states: “The FCC refuses and continues to refuse to provide information on the source of Ms Smith[’]s misinformation regarding the alleged agreemen[t] that was the basis for her request to terminate Mr. Watkins[’] license. Did she make it up? At any rate I am still requesting information on where the misinformation originated.”¹¹

III. DISCUSSION

9. Caldwell’s AFRs points to no error in EB’s Decisions. With respect to the May 25 Decision, we credit EB’s assertion that it searched its records and found no relevant documents in addition to the 39 documents already disclosed. Caldwell does not appear to be arguing that EB’s response to his FOIA request is in any way defective but rather appears to be arguing that Watkins’ license was improperly terminated. That is, he apparently seeks justification for the termination, not documents. A FOIA request is not, however, the proper vehicle for raising such questions, if, indeed, Caldwell has standing to raise them at all. In responding to a FOIA request, an agency “has no duty either to answer questions unrelated to document requests or to create documents.”¹²

10. With respect to the July 13 Decision, EB fully responded to Caldwell’s request by indicating that the text of 47 C.F.R. § 1.113(a) is publicly available. Moreover, EB had already explained, in responding to Caldwell’s earlier FOIA requests, that it had disclosed all records that it had located relevant to the termination of Watkins’ license. We credit these representations.

⁶ April 20 Request at 1.

⁷ May 12 Decision at 1.

⁸ May 25 AFR at 1.

⁹ June 10 Request at 1.

¹⁰ July 13 Decision at 1.

¹¹ August 2 AFR at 1.

¹² *Zemansky v. U.S. EPA*, 767 F.2d 569, 574 (9th Cir. 1985).

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED, That the applications for review filed by Thomas O. Caldwell ARE DENIED. Caldwell may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(B).¹³

The Officials responsible for this action are: Chairman Pai and Commissioners Clyburn and O’Rielly.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³ We note that as part of the Open Government Act of 2007, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect Caldwell’s right to pursue litigation. Caldwell may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448.